IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.609 OF 2006

CONNECTED WITH

COMPANY APPLICATION NO.889 OF 2006

In the matter of the Companies Act I of 1956;

And

In the matter of Section 391 to 394 of the Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Hindustan Impex Private Limited, R.M.Mehta Exports Private Limited and Bombay Apparels Private Limited with India Fashions Limited

Hindustan Impex Private Limited .. Petitioner Company

WITH

COMPANY PETITION NO.610 OF 2006

CONNECTED WITH

COMPANY APPLICATION NO.890 OF 2006

In the matter of Companies Act I of 1956;

And

In the matter of Section 391 to 394 of the Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Hindustan Impex Private Limted, R.M.Mehta Exports Private Limited and Bombay Apparels Private Limited with India Fashions Limited

R.M.Mehta Exports Private Limited .. Petitioner Company.

WITH

COMPANY PETITION NO.611 OF 2006

CONNECTED WITH

COMPANY APPLICATION NO.891 OF 2006

In the matter of the Companies Act 1 of 1956;

And

In the matter of Section 391 to

394 of the Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Hindustan Impex Private Limited, R.M.Mehta Exports Private Limited and Bombay Apparels Private Limited with India Fashions Limited

Bombay Apparels Private Limited .. Petitioner Company

WITH

COMPANY PETITION NO.612 OF 2006

CONNECTED WITH

COMPANY APPLICATION NO.892 OF 2006

In the matter of the Companies Act 1 of 1956;

And

In the matter of Sections 391 to 394 of the Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Hindustan Exports Private Limited, R.M.Mehta Exports

Private Limited and Bombay Apparels Private Limited with India Fashions Limited

India Fashions Limited .. Petitioner Company

Shri.Rajesh Shah i/b. Rajesh Shah & Co. for the petitioner.
Ms.K.V.Gautam, Dy.O.L.
Shri.C.J. Joy with Shri.Parag Vyas i/b.P.Kapoor for R.D.
Shri.Abhijeet Marathe i/b.Udeshi & Udeshi for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 2ND FEBRUARY, 2007.

P.C.:

1. The unsecured creditor has filed an objection in affidavit. The applicant Bharatbhushan Gupta was appointed as a franchisee under the agreement executed in that behalf. According to this objector, a sum of Rs.5.00 lacs is due and payable to him by the transferee company.

2. Upon a perusal of the affidavit of the unsecured creditor and the response thereto of the petitioner, I am satisfied that no prejudice would be caused to the

unsecured creditor in as much as the claim will have to be proved in accordance with law and the amounts recovered from the petitioner. The sanction to the scheme does not in any manner prevent the unsecured creditor from initiating such proceedings as are permissible in law to prove his claim and thereafter to recover the amounts from the petitioner/concerned transferee company. Shri.Shah has also relied upon the clause wherein debts and liabilities would be took over by the transferee company.

3. The other objection is also identical and it is on behalf of one limited company i.e. Forbes Gokak Limited. The claim of the company is of Rs.5,31,254/- towards price of the goods sold and delivered to M/s.India Fashions Limited. For identical reasons, this objection does not survive.

4. These petitions are under section 391 and 394 of the Companies Act, 1956. These Company Petitions seek sanction to the Scheme of Amalgamation between the petitioners in C.P.Nos.609, 610 & 611 of 2006 and C.P.No.612 of 2006.

5. Petitioners have set out their objects so also the purpose of evolving the scheme. It is pointed out that

the scheme, if sanctioned, would result in efficient and proper management of business of companies. Petitioners have complied with the statutory provisions. They have also applied for either holding or dispensation of the concerned meetings and copies of the orders passed in that behalf are annexed. A copy of scheme is also enclosed and its salient features are pointed out. It is contended that if the scheme is sanctioned, it will be for the benefit of the Companies.

6. Since the compliance with the necessary provisions has been made and due declarations also set out, learned Counsel seeks sanction to the scheme of amalgamation.

7. The notice was duly served on the Regional Director and he has filed affidavits. The R.D. has called upon the petitioners to furnish requisite details for enabling him to arrive at a satisfaction that the scheme is not prejudicial to the interest of creditors, shareholders so also contrary to the public interest. He has filed affidavit in which he has referred to the report from ROC, copy of which is annexed to the affidavit. Further, he has referred to the objects of the scheme and the relevant provisions therein. Thereafter, he has stated on oath that the scheme is not prejudicial to the

interest of creditors, shareholders and the public.

8. The O.L. has also submitted his affidavit. It has been stated on the basis of the report of C.A. who has scrutinised the books of accounts and related papers, that the scheme is not contrary to the interest of shareholders, creditors and public at large.

9. I am satisfied from a perusal of the petition and the annexures so also the aforesaid affidavits that no prejudice will be caused if the scheme as proposed by the petitioners is sanctioned.

10. Accordingly, Company Petition Nos.609, 610 and 611 of 2006 are made absolute in terms of prayer clauses (a) to (j). Company Petition No.612 of 2006 is made absolute in terms of prayer clauses (a) to (i). Costs of R.D. and O.L. quantified at Rs.2,500/- each. Drawn up order dispensed with. All concerned to act upon an authenticated copy of this order and the scheme.

(S.C.Dharmadhikari, J.)